

COURT OF APPEALS
DIVISION TWO

¶1 A jury found petitioner Sandy Salcido Duran guilty in cause number CR-20032153 of aggravated driving with an illegal drug or its metabolite in his body while his driver's license was suspended or revoked. It found him guilty in cause number CR-20041353 of aggravated driving with an illegal drug or its metabolite in his body with two or more prior convictions for driving under the influence of an intoxicant (DUI). The trial court found Duran had two previous felony DUI convictions and sentenced him to prison for concurrent, mitigated, eight-year terms. We affirmed his convictions and sentences on

appeal. *State v. Duran*, No. 2 CA-CR 2004-0342 (memorandum decision filed Oct. 27, 2005).

¶2 Duran then filed a notice he was seeking post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. The trial court appointed counsel who filed as a “petition” what was, in substance, a notice of review pursuant to Rule 32.4(c)(2), stating that he had thoroughly reviewed the record without finding any meritorious issues cognizable under Rule 32. The trial court granted Duran leave to file a supplemental, pro se petition. In it, Duran asked the court to reduce his mitigated sentences from eight- to six-year terms, based in part on his mistaken assertion that he had been acquitted of “the more serious crime[s]” in his case and found guilty of “the lesser crime[s].”¹ The state responded that Duran’s sentences were lawful and proper and that the trial court lacked jurisdiction to modify them.

¶3 The issue of most concern to Duran, both below and on review, is the treatment of the present offenses as repetitive and the enhancement of his sentences under § 13-604(C) based on his two previous felony convictions for DUI. He contends he should have been sentenced exclusively under A.R.S. §§ 28-1381 and 28-1383, which, he claims, were the sentencing statutes alleged in his indictment and the only statutes that should have governed his sentencing. Duran has overlooked that each of the counts in each of his indictments alleged not only the DUI statutes but also A.R.S. §§ 13-603, 13-604, 13-701,

¹In cause number CR-20032153, the jury found Duran not guilty of both aggravated driving under the influence of an intoxicant while his license was suspended or revoked and the lesser-included offense of DUI. In cause number CR-20041353, the jury found Duran not guilty of both aggravated driving under the influence of an intoxicant with two or more prior DUI violations and the lesser-included offense of DUI.

and 13-702. Duran’s claim might reflect the natural unfamiliarity of a layperson with the “complex, multiple-step process [our legislature has chosen] to determine the particular sentence for a given crime.” *State v. Bly*, 127 Ariz. 370, 373, 621 P.2d 279, 282 (1980). Although Duran’s confusion is understandable, his claim nonetheless lacks merit, and the trial court correctly ruled Duran was properly sentenced under the applicable statutes.

¶4 The trial court separately characterized one of Duran’s issues—his contention that he had been acquitted of “the more serious crime” and convicted of “the lesser crime” and should therefore have received lesser, six-year sentences—as a claim that his convictions violated his rights under both the federal and state constitutions. But Duran could have raised this issue on appeal; therefore, he was precluded from raising it in this post-conviction proceeding. *See* Ariz. R. Crim. P. 32.2(a)(3). And, as Duran has not specifically challenged the trial court’s ruling on this issue in his petition for review, we need not address it further. Last, to the extent Duran asked the trial court to reconsider his sentence based on the facts presented at his original sentencing, we agree with the state that the trial court lacked jurisdiction to do so. *See State v. Guthrie*, 111 Ariz. 471, 473, 532 P.2d 862, 864 (1975) (trial court may not redetermine valid sentence affirmed on appeal).

¶5 Although we grant the petition for review, we deny relief.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

PHILIP G. ESPINOSA, Judge

GARYE L. VÁSQUEZ, Judge